



JAMES E. JOHNSON
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

DONNA A. CANFIELD
Assistant Corporation Counsel
Phone: (212) 356-2461
Fax: (212) 356-2438
dcanfiel@law.nyc.gov

April 3, 2020

BY: ECF

Honorable James L. Cott
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Kaye v. NYC Health & Hospitals Corp. et al.*, 18-cv-12137 (JPO)(JLC)

Dear Judge Magistrate Judge Cott:

I write in response to plaintiff's letter filed on March 30, 2020, and Your Honor's Order, dated March 31, 2020. *See* Dkt. Nos. 80 and 81.

In her letter to the Court, Plaintiff's requested relief appears to be an application for an informal conference pursuant to Rule 37.2. Plaintiff's application, however, is premature, since Plaintiff has not identified with any specificity which of Defendants' responses remains deficient after its final production in January. Instead—as is apparent in her current application—Plaintiff remains doggedly focused on acquiring “discovery on discovery”. Plaintiff's request for “discovery on discovery” has no good faith basis, as Plaintiff fails to provide an adequate factual basis to justify the discovery. *See* Dkt. 80.

With respect to the affidavit from Plaintiff's expert, it mischaracterizes Defendants' review workflow. The technology assisted review methodology described by Plaintiff's expert is a standard active learning workflow. Defendants have repeatedly advised Plaintiff that we used continuous active learning (“CAL”) for our review. A CAL workflow does not require the creation of a control set. Furthermore, recall, precision, and F score statistics are not required for review validation when using CAL. We have explained to Plaintiff that these statistics were not calculated as part of our workflow and that is reason we are unable to provide them. That being said, we stand ready to meet-and-confer with Plaintiff's counsel to discuss how we validated our review, as we have repeatedly advised Ms. Hagan.

Thank you for your attention to this matter.

Respectfully submitted,

ECF /s/

Donna A. Canfield
Assistant Corporation Counsel
dcanfiel@law.nyc.gov

cc: Special Hagan (by ECF)